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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

IN

S.B. Criminal Appeal No.935/2002

Dilip @ Bholu S/o Shri Laxmi Narayan
...Accused Appellant
Versus

The State of Rajasthan through P.P.
...Respondent

Date of Judgment :::: March___/2006

PRESENT

Hon'ble Mr. Justice Narendra Kumar Jain

Shri N.A. Naqvi with
Shri Liyakat Ali and
Shri Manoj Avasthi for the accused appellant
Shri B.S. Chhaba, P.P., for the State

By the Court,

This appeal is directed against the judgment and order dated 8th of July 2002 passed by the Additional District & Sessions Judge (Fast Track) No.2, Dholpur, in Sessions Case No.300/2001, whereby he convicted and sentenced the accused appellant under Section 304B of the Indian Penal Code (for short, 'IPC'), to ten years rigorous imprisonment.

Briefly stated, the facts of the case are that on 9th April 2000 PW-1 Deep Singh lodged a written report (Exhibit P-1) at Police Station

Kotwali Dholpur, wherein it was alleged that his daughter Rekha was married with Bhola @ Dilip Singh about three years ago. Bhola @ Dilip Singh started harassing her daughter Rekha by saying that her father has not given dowry. He used to tell her daughter to bring dowry in cash as well as scooter. It was further alleged that his daughter was ousted from the house and she remained with him for about four months but she was taken back by Bhola @ Dilip Singh about twenty days ago and he came to know that today she has been killed. She was set at fire. On the basis of this information, a case under Section 304B and 498A of the IPC was registered and investigation commenced. After completion of investigation, the police filed a charge-sheet against the accused, in the court of chief Judicial Magistrate, Dholpur, who committed the case for trial to the court of Sessions Judge, who, in turn, transferred it for disposal to the court of Additional District & Sessions Judge (Fast Track) No.2, Dholpur.

The trial court framed charge against the accused appellant under Section 302 IPC, and in alternative Section 304B IPC. The accused appellant

denied the charge and claimed to be tried. The prosecution examined ten witnesses and produced documentary evidence Exhibit P-1 to Exhibit P-11. Thereafter statement of accused was recorded under Section 313 of the Code of Criminal Procedure (for short, 'Cr.P.C.'). In defence, the statement of Pancham Singh (DW-1) and Dr. Vijay Singh (DW-2) were recorded and documentary evidence Exhibit D-1 to Exhibit D-3 was filed.

After hearing the arguments, the learned trial court convicted and sentenced the accused appellant as stated above.

The learned counsel for the accused appellant contended that from the prosecution evidence it is clear that financially the accused appellant was well placed, whereas the parents of the deceased were not that much comfortable financially, therefore, there was no question to demand dowry by accused from them. He further contended that brother of the deceased was residing with accused for his education and her grandmother resided with them for her medical treatment. In fact, the accused was helping them. He referred the statement of PW-1 Deep Singh, father, PW-2 Dhan

Devi, mother, PW-4 Ram Khiladi, uncle, and PW-7 Anil Kumar, brother of the deceased. These witnesses stated that the marriage of accused with the deceased solemnized in a Sammellan (combined marriage programme). These witnesses have admitted that financially they were very weak and they married Rekha in Sammellan. The contention of the learned counsel for the accused appellant is that looking to the status and family background of the parents of the deceased no one can believe that any person will make demand of dowry from them, therefore, the allegations against the accused appellant about demand of dowry are false. In support of his contention the learned counsel for the accused appellant referred the decision of the Hon'ble Supreme Court in the case of Sunil Bajaj Vs. State of M.P. (2001) 9 SCC 417.

The learned counsel for the accused appellant further contended that when the accused came back from his office and saw his wife in burning condition, he immediately came in her rescue and while doing so he also sustained burn injuries. He referred the statement of DW-2 Dr. Vijay Singh, who examined him on 11.4.2000. The injury report of

the accused was placed on the record as Exhibit D-3. He, therefore, contended that looking to the conduct of the accused appellant it cannot be presumed that he set Rekha at fire and he has been falsely implicated in the matter.

The learned counsel for the accused appellant further contended that there is lack of evidence in respect of demand of dowry made by the accused from the deceased. He referred the statements of PW-1 Deep Singh, PW-2 Dhan Devi, PW-4 Ram Khiladi, PW-5 Lal Kumar and PW-7 Anil Kumar, in this connection. PW-4 Ram Khiladi stated that the amount of Rs.20,000/- was demanded soon before the death of Rekha but before it, no demand of cash or scooter was made at any point of time. PW-7 Anil Kumar stated that accused appellant Bholu @ Dilip Singh demanded Rs.20,000/- and told them that he has to repay some loan. On the basis of these statements the learned counsel for the accused appellant contended that there was no demand of dowry in cash or scooter but even if the statements of prosecution witnesses are believed to be true then it was a demand of money for repayment of some loan amount.

He also contended that the prosecution

failed to prove that the marriage of Rekha with accused Bhola @ Dilip Singh solemnized within seven years of the date of incident. He referred the statement of PW-1 Deep Singh, father of the deceased, and the statement of DW-1 Pancham Singh, in this regard, who stated that the accused married with Rekha about 9 years ago of the date of incident. He also contended that it was the accused, who himself, informed the complainant party about the death of Rekha and in this regard he referred the statement of PW-4 Ram Khiladi and PW-9 Laxman Das, the Circle Officer. He also referred the decision of the Hon'ble Supreme Court in the case of Arvind Singh Vs. State of Bihar, (2001) 6 SCC 407, wherein it was held that firstly the burden lies on the prosecution to prove the husband's guilt beyond reasonable doubt before assuming presumption against him under Section 113-B of the Evidence Act.

Learned Public Prosecutor, on the other hand, contended that the learned trial court has considered the oral and documentary evidence and rightly convicted and sentenced the accused appellant in the facts and circumstances of the present case.

I have considered the submission of the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

In Shyam Lal Vs. State of Haryana, (1997) 9 SCC 759, the Hon'ble Apex Court held that it is imperative, for invoking the legal presumption, to prove that soon before her death, deceased was subjected to cruelty or harassment. In the absence of any such evidence it is not permissible to take recourse to legal presumption in S.113-B of the Evidence Act.

In Sunil Bajaj's case (supra), the Hon'ble Apex Court considered the provisions of section 304B IPC and held that in order to convict an accused for offence under section 304B IPC, the following essentials must be satisfied:-

- (1) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- (2) such death must have occurred within 7 years of her marriage;
- (3) soon before her death, the

woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(4) such cruelty or harassment must be for or in connection with demand of dowry.

In Arvind Singh's case (supra), their Lordships of the Hon'ble Supreme Court observed that it is true that the husband being a bedroom companion ought to explain the circumstances, but there exists an obligation on the part of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Criminal jurisprudential system of the country has been to that effect and there is neither any departure nor any escape therefrom.

In State of Andhra Pradesh Vs. Raj Gopal Asawa & Another, (2004) 4 SCC 470, the Hon'ble Supreme Court considered the provisions of Dowry Prohibition Act, 1961, the provisions of Section 304B IPC as well as Section 113-B of the Evidence Act and held as under:-

"11. A conjoint reading of

Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the aforesaid presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and

that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate

that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

In Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar, 2005 (1) Crimes 277 (SC), the Hon'ble Supreme Court again considered the meaning of dowry and the expression "soon before her death" used in Section 304-B IPC. The Supreme Court held that the determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case.

Section 304B provides that where the death of a woman is caused by any burns or bodily injury

or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

In view of the above settled position of law in respect of offence, now I deal with the evidence available in the present case. PW-1 Deep Singh, father, PW-4 Ram Khiladi, uncle, PW-5 Lal Kumar, Maternal Uncle, and PW-7 Anil Kumar, the brother, have categorically stated in their statements that the marriage of Rekha with accused Bhola @ Dilip Singh solemnized about three years ago of her death. There is nothing in their cross-examination about the period of marriage. DW-1 Pancham Singh has stated that the marriage of Bhola @ Dilip solemnized about ten years ago. From the statement of PW-1, PW-4, PW-5 and PW-7, I am satisfied that the marriage of accused with Rekha solemnized about three years ago from her death.

The postmortem (Exhibit P-10) shows that as

per the opinion of the medical board the deceased died due to shock caused by extensive antemortem burn. In Column I EXTERNAL APPEARANCE of Exhibit P-10 it is mentioned that smell of kerosene present. The site plan is Exhibit P-3 and therefrom it is clear that kerosene can and match box were seized from the place of occurrence. Exhibit P-6 is the seizure memo of kerosene can and match box. Exhibit P-11 is the FSL Report. The description of articles and result of analysis are as under:-

"The packet marked A contained partially burnt/burnt cotton swabs and pieces of cotton cloth ash, all packed in a polythene bag.

RESULT OF ANALYSIS

On Physico-chemical analysis:-

Remnant fractions of kerosene were detected in the extract of the exhibits contained in the packet marked A."

The accused has examined DW-2 Dr. Vijay Singh to show that he tried to save life of his wife

when he saw her in burning condition and he sustained burn injuries but a bare perusal of Exhibit P-9, arrest memo of the accused dated 10.4.2000, shows that no burn injuries on the person of accused were mentioned. The injury report of accused Exhibit D-3 is contrary or not corroborated with Arrest Memo of accused (Exhibit P-9). The accused was produced before the magistrate but he did not make any request or application before him for his medical examination. There is no complaint on the record by accused to Magistrate or to any authority to show that he had sustained burn injuries on his person and the same has not been mentioned in his arrest memo (Exhibit P-9). Exhibit P-9 has been proved by PW-9 Laxman Das, the Circle Officer, who investigated the matter. A question was put in cross examination to PW-9 Laxman Das about burn injuries on the person of accused and he categorically stated that he did not see any burn injuries on the hands of the accused at the time of his arrest on 10.4.2000. The accused, in his statement, recorded under Section 313 Cr.P.C., stated that the fire was due to gas whereas above referred documents and evidence show that kerosene

was used either for killing Rekha or suicide committed by her. The defence and explanation of the accused about death of deceased in the case is apparently false. It is a settled law that false explanation of the accused connects him with the crime.

From the above referred evidence it is clear that death of Rekha was caused by burns and her death cannot be said to be natural or accidental in the facts and circumstances of the present case. In *Satveer Singh Vs. State of Punjab* (2001) 8 SCC 633, the Hon'ble Apex Court observed "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused ... or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC. *Satveer Singh's* case was further considered by Hon'ble the Apex Court in *Kamesh Panjiyar @ Kamlesh Panjiyar's* case (supra). Her death caused within seven years of her marriage and from the evidence on the record it is also clear that she was subjected to cruelty or harassment by the accused for or in connection with demand of dowry.

PW-1 Deep Singh, PW-2 Dhan Devi, PW-4 Ram

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Khiladi, PW-5 Lal Kumar and PW-7 Anil Kumar, all have stated about demand of dowry and harassment of the deceased for not bringing cash and scooter. It appears from the evidence that because of poverty of the parents of deceased, they were not in a position to satisfy the demand of dowry of the accused appellant Bhola @ Dilip Singh. The parents married their daughter in Sammellan because of their poor financial condition. In these circumstances it is clear that all necessary ingredients to establish offence under Section 304B IPC against the accused appellant Bhola @ Dilip Singh are made out.

In view of the above discussion of evidence as well as settled proposition of law, I do not find any force in any of the contentions of the learned counsel for the accused appellant and there is no force in this appeal and the same is hereby dismissed.

(Narendra Kumar Jain), J.

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